

No. 12566.

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

GERALD GLENN BOYDEN,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLEE'S BRIEF.

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APPELLEE'S BRIEF.

Jurisdictional Statement.

The United States District Court for the Southern District of California had jurisdiction of Appellant and the subject matter. This Court has jurisdiction of the appeal.

The offense charged was triable by the District Court under authority of Title 18, United States Code, Section 2312, wherein the offense was defined, and of Title 28, United States Code, Section 41, Subdivision 2, which confers jurisdiction to try the case upon the District Court. This Court has jurisdiction of the appeal under the provisions of Title 28, United States Code, Section 225(a) and (d), which treat of the jurisdiction of Courts of Appeal.

Statement of Case.

The record in this case is devoid of any part of the evidence or proceedings at the trial or hearing which was stenographically reported.

The record, accordingly, is inadequate for any review of the evidence or proceedings in the trial court not included in the Clerk's Transcript.

The record shows that appellant was indicted January 25, 1950, under 18 U. S. C. 2312 for transporting a stolen car in foreign commerce [T. R. 2]; arraigned January 31st, 1950, at which time the Court appointed counsel for appellant who thereupon entered a plea of "Not Guilty" and the case was set for jury trial on March 14, 1950 [T. R. 15-16].

Upon the trial of the case no peremptory challenge was exercised [T. R. 18] in the selection of the jury which returned a verdict of guilty [T. R. 22], and by stipulation the exhibits in the case were withdrawn [T. R. 21], and written Judgment and Commitment were filed March 17, 1950 [T. R. 23-24].

One so-called "Notice of Appeal" was filed on March 27, 1950 [T. R. 25], and the other on May 8, 1950 [T. R. 32].

Appellant filed his "Defendant's Motion to Vacate and Set Aside Judgment and Sentence" on April 24, 1950 [T. R. 27-30], and the Court on the same day considered and denied said Motion [T. R. 31].

On May 8, 1950, appellant filed document entitled 'Paupers Affidavit' [T. R. 33], and on the same day the Court ordered that appellant be permitted to appeal without prepayment of the usual filing and certification fees without denied, without prejudice to application to this Court, appellant's request for a copy of the transcript at Government expense [T. R. 34].

I.

There Is No Evidence of Illegal Arrest.

The record before this Court does not afford any basis for a consideration on the merits of the legality of appellant's arrest.

However, appellant's "Argument of the Case" discloses that appellant was arrested by the Mexican Authority, in Tiajuana, Mexico, deported from Mexico and delivered to San Diego Authorities who placed appellant in the San Diego jail after appellant admitted he had stolen the automobile (App. Br. p. 13).

The illegal arrest of which appellant complains was effected, according to appellant, by a San Diego "City" police officer [T. R. 25, line 17]. Thus it would inferentially appear that no Federal authorities were involved in any illegal arrest of appellant.

II.

Petition for Habeas Corpus Insufficient.

On its face, appellant's purported "Petition for Writ of Habeas Corpus" is wholly insufficient.

III.

Criticism of Defense Counsel and Jury Frivolous.

There is no evidence in any record before this Court to the effect that "Defense Counsel" was either incompetent or inexperienced.

There is nothing in the Record to indicate appellant's dissatisfaction with the trial jury or any impropriety in its selection. No peremptory challenge was exercised [T. R. 18].

IV.

Evidence Proper on Issue of Intent.

There is nothing in the record before this Court to indicate any impropriety in the admission of any evidence.

Evidence of similar and related offenses may be properly introduced into evidence as tending to show a consistent pattern of conduct highly relevant to the issue of intent.

Nye & Nissen v. U. S., 330 U. S. 613, 618, affirming this Court's opinion in 168 F. 2d 846.

V.

Admissions Properly in Evidence.

There is nothing in the record to show what, if any, confession or admission of appellant was introduced into evidence.

Further, appellant misinterprets the law and the significance of the quotation from *United States v. Haupt*, 136 F. 2d 661, 671 [13] (1943, Cal. App. 7).

Appellant also misinterprets the other cases cited in his brief.

VI.

Appellant Found Guilty of Crime Charged.

There is nothing in the record to indicate that appellant was found guilty of anything other than the charge in the one count indictment that

“On or about January 7, 1950, defendants Gerald Glenn Boyden and George Louis Thompson did transport and cause to be transported a certain stolen motor vehicle, namely: a 1947 Dodge sedan, motor number D24320635, from San Diego County, California, with the Southern Division of the Southern District of California, to Tiajuana, Baja California, Mexico; and the defendants then knew the motor vehicle to have been stolen.”

VII.

Court Involved in No Conspiracy.

There is nothing in the record to indicate that there was any conspiracy or that the Court participated in any conspiracy.

VIII.

Notice of Appeal Was Filed.

The record shows that appellant's Notice of Appeal was filed. Thus, appellant, in this connection, has nothing of which to complain to this Court.

IX.

Motion to Vacate Judgment and Sentence Properly Denied.

Appellant complains that his prayer to set aside sentence and judgment "should have been answered."

The record shows the prayer was "answered." It was denied on April 24, 1950 [T. R. p. 31].

Appellant's "Argument of the Case" demonstrates the fact that the issue was for the jury, which found against appellant on testimony of substantial character and weight.

Conclusion.

It is respectfully submitted that there is no merit in appellant's position, that the appeal is frivolous, and judgment should be affirmed.

Respectfully submitted,

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